

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,)	
)	
Plaintiff,)	
)	C.A. No. 22-1378-MN
v.)	
)	JURY TRIAL DEMANDED
MASIMO CORPORATION and)	
SOUND UNITED, LLC,)	
)	
Defendants.)	PUBLIC VERSION
<hr style="width: 45%; margin-left: 0;"/>		
MASIMO CORPORATION and)	
CERCACOR LABORATORIES, INC.,)	
)	
Counter-Claimants,)	
)	
v.)	
)	
APPLE INC.,)	
)	
Counter-Defendant.)	

**DECLARATION OF JAMIE L. KRINGSTEIN IN SUPPORT OF PLAINTIFF AND
COUNTERCLAIM-DEFENDANT APPLE INC.'S MOTION TO DISMISS MASIMO
CORPORATION'S COUNTERCLAIMS AND STRIKE ITS INEQUITABLE CONDUCT
AFFIRMATIVE DEFENSE**

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AFFIRMATIVE DEFENSE**

I, Jamie L. Kringstein, declare and state as follows:

1. I am an attorney at the law firm Desmarais LLP, counsel of record for Plaintiff and Counterclaim-Defendant Apple Inc. (“Apple”) in the above-captioned case. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

2. I submit this declaration in support of Plaintiff and Counterclaim-Defendant Apple Inc.’s Motion To Dismiss Masimo Corporation’s Counterclaims And Strike Its Inequitable Conduct Affirmative Defense, submitted concurrently herewith.

3. Attached as **Exhibit 1** is a true and correct copy of an excerpt of U.S. Patent No. 10,061,399, which was filed on July 15, 2016 and prosecuted by attorneys at Brownstein Hyatt Farber Schreck, LLP for Applicant Apple Inc.

4. Attached as **Exhibit 2** is a true and correct copy of an excerpt of U.S. Patent No. 10,285,645, which was filed on September 28, 2015 and prosecuted by attorneys at Brownstein Hyatt Farber Schreck, LLP for Applicant Apple Inc.

5. Attached as **Exhibit 3** is a true and correct copy of an excerpt of the “Petition for *Inter Partes* Review of United States Patent No. 7,296,121 Pursuant to 35 U.S.C. §§ 311–319, 37 C.F.R. § 42,” dated October 28, 2014 and filed in IPR 2015-00172 by attorneys at Fish & Richardson P.C. on behalf of Petitioner Apple Inc.

6. Attached as **Exhibit 4** is a true and correct copy of an excerpt of the “Patent Owner’s Preliminary Response,” dated March 6, 2019 and filed in IPR 2019-00270 by attorneys at Fish & Richardson P.C. on behalf of Patent Owner Apple Inc.

7. Attached as **Exhibit 5** is a true and correct copy of an excerpt of “Complainants’ Responses and Objections to Apple Inc.’s First Set of Interrogatories (1-65)” showing Apple Inc.’s Interrogatory No. 29 and Masimo Corporation’s Response to Interrogatory No. 29, which I understand was served by counsel for Masimo Corporation to counsel for Apple Inc. *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276, as it was provided to me by counsel for Masimo Corporation. The document is marked “COMPLAINANT’S CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER.”

8. Attached as **Exhibit 6** is a true and correct copy of an email thread dated February 15–17, 2023 between Jordan Malz (counsel for Apple Inc.) and Jared Bunker (counsel for Masimo

Corporation), with subject line “Apple/Masimo 1378 (D. Del.) -- Answer and Counterclaims Question,” in which Mr. Bunker attached the document that is provided herein as Exhibit 5 and requested that the document be treated “on an AEO basis.” I understand that “AEO” is an abbreviation for Attorneys’ Eyes Only.

9. Attached as **Exhibit 7** is a true and correct copy of “Order No. 1: Protective Order” entered by Chief Administrative Law Judge Charles E. Bullock *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276, on August 18, 2021.

10. **Exhibit 8** contains true and correct copies of the file histories of U.S. Patent Nos. 10,627,783, 10,942,491, and 11,474,483. Because these three file histories total over 4,500 pages, searchable PDFs are being provided in electronic form (USB flash drive). I have reviewed the electronic copies of these file histories and did not find the name “Myers” mentioned on any page of these documents.

I declare the foregoing to be true and correct under penalty of perjury.

Dated: February 21, 2023

By: /s/ Jamie L. Kringstein

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